Supreme Court, U.S.
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No. 87-24

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

LAWRENCE MOORE and
WALTER F. WHELAN, JR.,

Plaintiffs-Petitioners,

vs.

BECHTEL POWER CORPORATION, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, UNION LOCAL 569, PAUL BLACKWOOD and WAYNE LOVIN,

Defendants-Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ABE F. LEVY, ESQ.
LEVY, GOLDMAN & LEVY
611 South Shatto Place
Second Floor
Los Angeles, California 90005
(213) 380-3140
Attorneys for Defendants-Respondents
LOCAL 569, BLACKWOOD and LOVIN

DONALD A. NEWMAN, ESQ.
THELEN, MARRIN, JOHNSON & BRIDGES
333 South Grand Avenue, Suite 3400
Los Angeles, California 90071
(213) 621-9800
Attorneys for Defendant-Respondent
BECHTEL POWER CORPORATION

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Ninth Circuit erred in affirming the summary judgment granted defendant-respondents by the District Court below on the basis that plaintiff-petitioners' claims were barred in accordance with the six month statute of limitations found in Section 10(b) of the National Labor Relations Act, 29 U.S.C. section 160(b), in that the complaint was not served within six months after the accrual of plaintiff-petitioners' claims, without reaching and making a determination upon the substantive grounds relied upon by the District Court below in granting summary judgment.

2. Whether, if this Court elects to review the entire record on appeal, the summary judgment rendered by the District Court below should be affirmed on the grounds relied upon by that Court.

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

The names of the parties to this proceeding are those contained in the caption of this case. In addition, during the time period material to this case, Bechtel Power Corporation was a wholly owned subsidiary of Bechtel Group, Inc. and a member of the Bechtel Group of Companies.

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v.	)
BECHTEL POWER CORPORATION, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, UNION LOCAL 569, PAUL BLACKWOOD and WAYNE LOVIN, Defendant-Respondents.	)

RESPONDENTS BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATEMENT OF THE CASE

On or about November 10, 1983, plaintiff-petitioners filed a complaint in the United States District Court for the Southern District of California against their former employer, Bechtel Power Corporation ("Bechtel"), and their union, International Brotherhood of Electrical Workers, Union Local 569 ("Local 569" or "Union"). This complaint was never served.

On or about April 9, 1984, plaintiff-petitioners filed an amended complaint, adding a claim against Paul Blackwood and Wayne Lovin and adding the International Brotherhood of Electrical Workers to the caption

only. The amended complaint was served on the parties on or about April 24, 1984. The International Union was subsequently dismissed from the action.

Plaintiff-petitioners' claims against Bechtel were brought under section 301 of the Labor Management Relations Act, 29 U.S.C. section 185. Each plaintiff claimed that Bechtel had terminated his employment in August 1982 without just cause and, therefore, in breach of the operative collective bargaining unit. Each plaintiff further contended that Local 569 and Paul Blackwood and Wayne Lovin had breached their respective duties of fair representation, the former in failing to properly represent him in

the ensuing grievance procedure, and Messrs. Blackwood and Lovin by their conduct with respect to the procedures utilized in adopting an internal union dues increase.

After conducting discovery, defendant-respondents brought motions for summary judgment with respect to the respective claims asserted against them by plaintiff-petitioners.

On or about September 6, 1985, the United States District Court for the Southern District of California, the Honorable Leland C. Nielsen, Judge presiding, granted the motions for summary judgment by defendant-respondents Bechtel and Local 569 on the grounds that the Union had not breached its duty of fair

representation and, therefore, that as a matter of law, said defendant-respondents were entitled to judgment. The claims against Messrs. Blackwood and Lovin were dismissed without prejudice for failure by the plaintiff-petitioners to exhaust internal union remedies. [See Exhibit "B" to Plaintiff-Petitioners' Appendix to the Petition for Writ of Certiorari.]

Plaintiff-petitioners thereafter filed a timely notice of appeal with the Ninth Circuit Court of Appeals. On December 4, 1986, the Ninth Circuit Court of Appeals heard oral argument both with respect to (1) whether the District Court had properly granted summary judgment to defendant-

respondents Bechtel and Local 569 on the grounds that there was no genuine issue of material fact on the issue of whether Local 569 had breached its duty of fair representation and that, as a matter of law, said defendant-respondents were entitled to judgment and (2) whether plaintiff-petitioners' claims against Bechtel and Local 569 were barred under the applicable statute of limitations.

On or about January 7, 1987, the Ninth Circuit Court of Appeals issued an order which affirmed the summary judgment granted by the District Court below. In affirming the summary judgment, the Ninth Circuit Court of Appeals relied entirely on the grounds

that plaintiff-petitioners' claim was time barred in accordance with its holding in Gallon v. Levin Metals Corp., 779 F.2d 1439 (9th Cir. 1986) rev'd. sub. nom. ____ U.S. _____, 95 L.Ed.2d 489, ____ S.Ct. ____ (1987), that the six-month service requirement found in section 10(b) of the National Labor Relations Act, 29 U.S.C. section 160(b), was applicable to a hybrid action brought under section 301 of the Labor Management Relations Act, 29 U.S.C. section 185. It was uncontested in this action that plaintiff-petitioners had failed to serve their complaint within six months of the accrual of their claims.

Plaintiff-petitioners then filed this petition for writ of certiorari

to review the decision of the Ninth Circuit Court of Appeals.

ARGUMENT

Defendant-respondents maintain that the District Court below correctly granted their motions for summary judgment for the reasons relied upon in its decision.

Defendant-respondents do not dispute, however, that the grounds relied upon by the Ninth Circuit Court of Appeals in affirming the District Court's grant of summary judgment have been rejected by this Court in West v. Conrail, 481 U.S. _____, 95 L.Ed.2d 32, 107 S.Ct. _____, (1987) and cannot constitute valid grounds upon which the summary judgment granted by the

District Court may rest.

On this basis, plaintiff-petitioners have requested that this Court reverse the order of the Ninth Circuit Court of Appeals and remand the case to that Court for it to rule on the substantive merits, i.e., whether the District Court had properly granted summary judgment to defendant- respondents Bechtel and Local 569 on the grounds that there was no genuine issue of material fact on the issue of whether Local 569 had breached its duty of fair representation and that, as a matter of law, said defendant-respondents were entitled to judgment. Defendant-respondents accept that this Court may, in its discretion, reverse

the order of the Ninth Circuit Court of Appeals and remand this case to that Court with such instructions.

However, since in this case, in contrast to West v. Conrail and Gallon v. Levin Metals Corporation, the District Court granted summary judgment not on the basis of a failure to serve the complaint within six months of the accrual of the claims but on the grounds that there was no genuine issue of material fact with respect to Local 569's satisfactory discharge of its duty of fair representation, this Court may rather elect to review the entire record on appeal to determine whether the judgment rendered by the District Court below should be affirmed on the

grounds relied upon by that Court.

Should this Court elect to proceed in this latter manner, defendant-respondents stand ready to comply with any such order of this Court and request an opportunity to fully brief the issue relied upon by the District Court below.

CONCLUSION

Defendant-respondents maintain that the District Court below correctly granted their motions for summary judgment for the reasons relied upon in its decision.

Should this Court elect to review the entire record on appeal to determine whether the judgment rendered by the District Court below

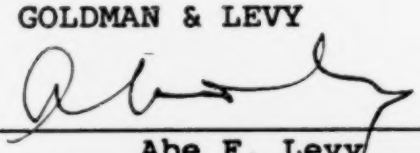
should be affirmed on the grounds relied upon by that Court, defendant-respondents stand ready to comply with any such order of this Court and request an opportunity to fully brief the issue relied upon by the District Court below.

If this Court elects instead to reverse the order of the Ninth Circuit Court of Appeals, defendant-respondents request that the case be remanded to that Court for it to determine whether the judgment rendered by the District Court below

should be affirmed on the grounds relied upon by that Court.

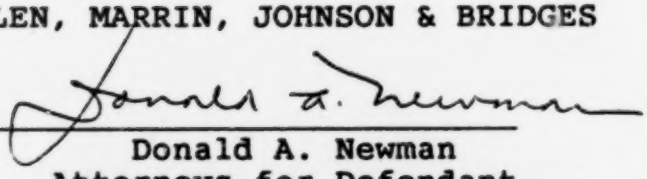
Respectfully submitted,

LEVY, GOLDMAN & LEVY

By 

Abe F. Levy
Attorneys for Defendant-
Respondents Local 569,
Blackwood and Lovin

THELEN, MARRIN, JOHNSON & BRIDGES

By 

Donald A. Newman
Attorneys for Defendant-
Respondent Bechtel Power
Corporation

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